

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Connect America Fund Phase II Auction)	AU Docket No. 17-182

REPLY COMMENTS OF AT&T

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I. Introduction

AT&T Services, Inc., on behalf of its operating affiliates (collectively, AT&T), is pleased to submit these reply comments on the Commission's proposed procedures for the Connect America Fund Phase II auction (CAF II auction or Auction 903).¹ Through Auction 903, the Commission will award almost \$200 million a year in high-cost support to winning bidders of a nationwide, multi-round reverse auction. Winning bidders will use their support to provide voice and broadband service in Commission-identified, high-cost and extremely high-cost areas. In addition to making available areas where a price cap carrier declined the Commission's CAF II state-level commitment in 2015, the Commission will permit auction participants to submit bids that include census block groups containing so-called extremely high-cost census blocks. Combined, the Commission estimates that there will be about 36,000 census block groups available for the auction.²

The key to a successful auction is in the details and, by and large, AT&T believes that the Commission got it right with its proposed auction procedures. Of course, there are discrete areas of disagreement among the commenters, which we discuss below, but there is unanimity in the record about the principles the Commission should follow as it finalizes these procedures.³ Most importantly, the Commission's auction rules should ensure a fair, open, and efficient competitive

¹ *Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903)*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 6238 (2017) (*Public Notice*).

² *Id.* at ¶ 12.

³ *See, e.g.*, American Cable Association Comments, AU Docket No. 17-182 et al., at 3-4 (filed Sept. 18, 2017) (ACA Comments).

bidding process. That means, the auction design must be simple enough to enable providers of all sizes, using different technologies, to participate.

The design also must enable bidders to maximize network efficiencies by allowing them to assemble contiguous networks across census block groups. As USTelecom explains, for terrestrial networks, average costs generally decrease as the size of a contiguous network service area increases. Operators will rely on this effect to make the business case for participation in the CAF II auction.⁴ The need for these cost efficiencies is particularly acute because the Auction 903 budget is significantly below the amount necessary to serve all the eligible locations that will be included in the auction. By combining different census block groups in a single bid, as opposed to bidding for each census block group individually, a bidder could bid more aggressively because of the inherent cost efficiencies and lower risks in a package of census block groups. The Commission states that it intends for Auction 903 to “maximize the value the American people receive for . . . universal service dollars”⁵ and maximizing network efficiencies furthers this Commission goal.

Some commenters oppose the Commission’s proposal to give bidders the option to submit a package bid on the basis that smaller bidders will be crowded out of the auction. We explain below how this concern is unfounded. We do agree, however, that the Commission should not adopt, as proposed, a rule to modify unilaterally a bidder’s package through operation of the so-called minimum scale percentage (MSP).⁶ This proposal, which could remove a census

⁴ USTelecom Comments, AU Docket No. 17-182 et al., at 6-7 (filed Sept. 18, 2017).

⁵ *Public Notice* at ¶ 2.

⁶ *See id.* at ¶¶ 90-92; USTelecom Comments at 6-8; Sacred Wind Communications, Inc. Comments, AU Docket No. 17-182 et al., at 5-6 (filed Sept. 18, 2017) (Sacred Wind Comments).

block group from a bidder's package in the event of a competing bid for that census block group (i.e., an overlapping bid), would unnecessarily complicate the auction, undermine a bidder's incentive to use package bidding, and lead to less competitive bidding. In these reply comments, we discuss several commenter-proposed alternatives to mitigate a package bidder's potential risk while addressing the Commission's desire to reduce the likelihood that small overlaps in bids could prevent support from being assigned to a potentially much larger number of areas included in package bids.⁷

The auction procedures should not unfairly disadvantage some technology providers over others or permit bidders to engage in coordinated bidding by sharing the same consultant. A few commenters ask the Commission to adopt additional filing requirements for bidders proposing to use wireless and satellite technologies.⁸ The Commission already proposed certain additional filing requirements for these industries⁹ and, as we explain below, the requesting commenters have failed to demonstrate that further technology-specific requirements are warranted. Similarly, commenters that request the Commission to weaken its anti-collusion rules to permit resource sharing¹⁰ have not shown that the resulting risk of coordinated bidding justifies their request.

⁷ *Public Notice* at ¶ 92.

⁸ *See, e.g.*, Rural Coalition Comments, AU Docket No. 17-182 et al. (filed Sept. 18, 2017); ITTA Comments, AU Docket No. 17-182 et al. (filed Sept. 18, 2017).

⁹ *See, e.g.*, *Public Notice* at ¶¶ 37-41, 49.

¹⁰ Rural Coalition Comments at 7-12; Rural Wireless Association Comments, AU Docket No. 17-182 et al., at 3-6 (filed Sept. 18, 2017); Wireless Internet Service Providers Association Comments, AU Docket No. 17-182 et al., at 4-6 (filed Sept. 18, 2017) (WISPA Comments); ACA Comments at 7.

Finally, for an auction to operate efficiently, bidders must have complete information about their obligations. A provider may decide to pursue funding for a particular census block group based on the Commission's representation that the census block group contains 1,000 locations, i.e., potential broadband customers. One commenter has analyzed the Commission's data and found on average that the Commission's cost model overstates the actual number of locations in CAF-eligible census blocks by approximately 20%.¹¹ AT&T recommends that the Commission address this known issue, as well as any minimum subscription rate assumption,¹² prior to the auction so that providers can make informed decisions about their anticipated network costs and resulting revenues if they were to win a bid. We discuss these and other issues, below.

II. The Auction Procedures That the Commission Proposes for Auction 903 Are Sound and Should Be Adopted with Minor Modifications.

A. The Commission Was Correct to Recognize the Efficiencies Inherent in Package Bidding and It Should Give Bidders the Option to Submit Package Bids.

AT&T strongly supports the Commission's proposal to give Auction 903 bidders the option to place a bid for a list of bidder-specified census block groups within a state or to submit bids for census block groups on an individual basis. Under this proposal, a bidder would provide the performance tier and latency combination for each census block group on the list, as well as a single price point for that list.¹³ Package bidding enables bidders to pass through in their bid the

¹¹ See Vantage Point Solutions Comments, AU Docket No. 17-182 et al. (filed Sept. 18, 2017) (Vantage Point Comments).

¹² *Public Notice* at ¶ 36 (seeking comment on whether to require bidders to assume a 70% subscription rate for network design purposes).

¹³ *Id.* at ¶ 90. See also *id.* at ¶ 91 (identifying other conditions for a package bid).

network efficiencies they expect to achieve by serving a range of contiguous census block groups.¹⁴ If forced to bid only on a census block group-by-census block group basis, bidders could not assume that they would achieve those efficiencies given the risk that they might win only some, but not all, of the identified census block groups. Allowing package bidding thus will result in more cost-effective broadband deployments, which is particularly essential for Auction 903 given the budgetary constraints. It is also consistent with the Commission’s goal of distributing support “in such a way as to bring advanced services to as many consumers as possible.”¹⁵

Several commenters oppose permitting bidders to use package bidding on the basis that small bidders will be crowded out of the auction.¹⁶ For example, U.S. Cellular asserts that package bidding offers large service providers the opportunity to submit bids that cover eligible areas across an entire state and thus the Commission should limit package bidding to census block groups in a county.¹⁷ The Commission’s decision to include extremely high-cost census blocks in the CAF II auction – which AT&T supports – means that there will be significantly more census blocks eligible for bidding than there will be funding.¹⁸ Given the limited budget

¹⁴ See, e.g., Sacred Wind Comments at 1.

¹⁵ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, ¶ 80 (2016) (*Phase II Auction Order*).

¹⁶ See, e.g., U.S. Cellular Corporation Comments, AU Docket No. 17-182 et al, at 6 (filed on Sept. 18, 2017); ACA Comments at 5.

¹⁷ U.S. Cellular Comments at 8, 12-14.

¹⁸ While the Commission has assigned the extremely high-cost census blocks a reserve price, it has not provided any additional funding for those census blocks. Based on AT&T’s analysis of Commission data, the amount of support necessary to provide broadband to the remaining unserved high-cost and extremely high-cost areas is over \$950 million/year. Due to budgetary constraints, the Commission is making only \$198 million/year available for the CAF II auction.

available and the large geography eligible for auction (about 300,000 census blocks in 36,000 census block groups), it is unrealistic to think that any bidder would submit a package bid that covers all or most of the census block groups in a state. The Commission simply is not making enough funding available in Auction 903 for that to be a plausible scenario. Any reasonable bidder, whether large or small, will target select areas where it can meet the public interest obligations while offering a competitive bid.

In addition, the form of package bidding that the Commission proposes does not allow take-it-or-leave-it offers, and it does not force the Commission to decide between assigning a large set of areas to one bidder or assigning one of the areas within that set to another bidder. Thus, it reduces the ability of large bidders to crowd out smaller bidders by making large package bids even if that were a likely scenario. Moreover, in Auction 903, package bidding is merely optional. A small service provider that is interested in bidding in targeted, small geographic areas, can simply choose to bid on individual census block groups or on small packages of a few census block groups.

Although USTelecom and Sacred Wind both support package bidding, they rightly identify a design flaw with the Commission's package bidding proposal.¹⁹ In the event there is a geographic overlap between two or more bidders, the Commission may "assign fewer than the full list of areas to the [package] bidder as long as the funding associated with the assigned areas is at least equal to a bidder-specified percentage of the funding requested for the complete list of areas."²⁰ The Commission's rationale for its so-called minimum scale percentage (MSP) proposal – to ensure that "small overlaps in the areas included in package bids do not prevent

¹⁹ See USTelecom Comments at 6-7; Sacred Wind Comments at 5-7.

²⁰ *Public Notice* at ¶ 90. The Commission proposes establishing an upper limit on this percentage of 80%.

support from being assigned to a potentially much larger number of areas included in the package bids”²¹ – is sound, but AT&T respectfully agrees with USTelecom and Sacred Wind that the Commission could achieve that objective without creating substantial risks to bidders. By setting the MSP at 80%, the Commission fails to account for interdependencies between census block groups contained in a package bid. As Sacred Wind explains, this proposal treats all census block groups in a package as fungible, “with the sole determining factor for the bidder, whether it will receive a minimum percentage of support for serving some subset of the package.”²² Of course that is not the case.

To address this unacceptably high risk, we agree with USTelecom that the Commission should cap the MSP higher than the proposed 80% level. An 80% maximum is simply too low to allow effective package bidding. While USTelecom requests that the Commission permit bidders to select an MSP of up to 100%,²³ even increasing the cap to the range of 90% to 95% will correspondingly reduce the risk associated with package bidding by reducing the number of possible subsets.

Sacred Wind raises an additional concern with the Commission’s MSP proposal. A bidder may intend to deploy facilities in one census block group so that it may also serve another census block group included in its package. If the census block group where the facilities will be constructed is removed from the package because of an overlap, the bidder’s planned network

²¹ *Id.* at ¶ 92.

²² Sacred Wind Comments at 6; USTelecom Comments at 6 (Commission assumes erroneously that “being guaranteed a certain percentage of support is all that is needed to make a network provider comfortable with an ad hoc modification of their bid package”).

²³ USTelecom Comments at 7-8.

efficiencies likely will disappear.²⁴ To remedy this concern, Sacred Wind proposes a contingency bidding process whereby a bidder could identify the census block groups in its package that are contingent on winning another specific census block group in the package. If a census block group on which others are contingent cannot be assigned because of an overlap, then the package bidder would not be assigned any of the census block groups that are contingent upon it, although it could still be assigned non-contingent census block groups in its package.²⁵ AT&T agrees with Sacred Wind on why such a process is necessary and encourages the Commission to develop the details to ensure that the rule does not distort strategic incentives or disadvantage any class of bidder. Some details include, the number of census block groups that can be contingent on one census block group, the number of contingent bids that may be included in a package, and how unassigned contingent bids are carried forward.

There is an additional approach the Commission could consider to address the concern that bidders will be unwilling to submit package bids (and pursue the corresponding efficiency gains) if there is some risk that they will wind up with large gaps in their network as a result of the MSP rule. Such gaps would effectively reduce the density of the network, defined as the funding-eligible locations per square mile. The Commission could permit bidders to specify a minimum *density* percentage to ensure that their package bid would not result in a subset that was less dense, in terms of locations per square mile, than some percentage of the density of the original package. Because the density of locations is a key driver of network costs, this measure would lower the risk that a bidder will “win” a package of census block groups that lack sufficient density or contiguity to achieve the network efficiencies on which its bid was based.

²⁴ Sacred Wind Comments at 6-7.

²⁵ *Id.* at 7.

As with Sacred Wind's contingency bidding proposal, the Commission would need to develop and finalize the details of this approach. AT&T is available to work with interested parties to assist with that effort.

Finally, there is one more tool the Commission could use to reduce the negative effects of the MSP. It could adopt USTelecom's switching proposal.²⁶ The Commission proposed to limit a bidder's "ability to switch to bidding for support in different areas from round to round" by establishing a 10% switching percentage.²⁷ We agree with USTelecom that this Commission proposal unnecessarily constrains a bidder's ability to respond to market conditions.²⁸ Adopting a graduated switching percentage schedule, as proposed by USTelecom,²⁹ would allow bidders to adjust their bidding strategies to avoid situations where their desired census block groups overlap with other bidders. Because this is a nationwide auction, all bidders are competing with all other bidders regardless of geography so preventing overlaps will not reduce competitive pressure. However, allowing providers to adjust their bids to avoid overlaps will reduce the negative effect of the MSP and should result in more eligible areas being covered.

B. The Commission Should Reject Requests to Weaken Its Long-Standing Anti-Collusion Rules.

The Commission should reject proposals to modify its anti-collusion rules to permit resource sharing among bidders as long as those bidders are not bidding in the same

²⁶ USTelecom Comments at 9-10.

²⁷ *Public Notice* at ¶¶ 99-100.

²⁸ USTelecom Comments at 9.

²⁹ *Id.* at 10-11.

geography.³⁰ Commenters supporting these proposals contend that the Commission should adopt a “more flexible” approach to these rules because the allegedly overly-complicated nature of proposed Auction 903 will force would-be bidders to lawyer-up and retain auction specialists in order to compete.³¹

AT&T respectfully disagrees with these parties’ claims that Auction 903 is overly complicated. Although conducting a reverse auction like Auction 903 necessarily poses some complications, the Commission has largely succeeded in establishing procedures designed to encourage participation by entities that may never before have participated in such an auction. The Commission could further simplify the process by providing written guidance to the industry, conducting multiple training sessions and mock auctions, making available dedicated staff to respond to questions from prospective bidders, and implementing a few procedural changes discussed in these reply comments. Such efforts should demystify Auction 903 and make evident that would-be bidders do not need to hire, as some have suggested, a full complement of consultants, experts, and attorneys to participate in any meaningful way in the auction.

At the end of the day, a bidder must determine the minimal amount of support it requires to provide service in Commission-identified, CAF II auction-eligible areas. Equipped with that information, as supplemented by the examples in the Commission’s Technical Guide,³² auction

³⁰ See, e.g., WISPA Comments at 5.

³¹ See, e.g., Rural Coalition Comments at 7-12; ACA Comments at 7; WISPA Comments at 4-6; Rural Wireless Association Comments at 3-6.

³² On the same day the Commission released its *Public Notice*, it also released a technical guide containing additional details of the proposed bidding procedures and numerous examples of how those procedures would operate in practice. See *Technical Guide on Proposed Bidding Procedures for the Connect America Fund Phase II Auction (Auction 903)*, AU Docket No. 17-182, WC Docket No. 10-90,

participation for entities like the Rural Coalition and WISPA members should be relatively straightforward since they have indicated that they intend to bid to provide service in or near their communities.³³ The only scenario in which the Commission’s proposed auction design might become challenging for potential bidders is if they intend to submit package bids and that is only because of the Commission’s proposal to impose a maximum MSP of 80%. But bidders do not need to submit such bids, and, in any event, the Commission could eliminate much of that concern by modifying its proposal with an eye toward lowering the risk and thus simplifying the process of package bidding.³⁴

Given the very high risk that bidders could use resource sharing to engage in coordinated bidding, and thus undermine the integrity of the auction, those supporting this proposal plainly bear a heavy burden to show that such a change in the anti-collusion rules is warranted. After all, the Commission did not adopt its anti-collusion rules in a vacuum. Rather, it relied on years of experience in conducting both forward and reverse auctions. Indeed, Dish Network’s exercise of *de facto* control over several designated entities in Auction 97 amply demonstrates both the significant risks of, and harms caused by, the sorts of coordinated conduct the anti-collusion rules are intended to address.³⁵

Public Notice, DA 17-733 (rel. Aug. 4, 2017). We expect the Commission to update this document once it finalizes its Auction 903 procedures.

³³ Rural Coalition Comments at 6, 8; WISPA Comments at 5.

³⁴ See pp. 6-9, *supra*.

³⁵ Months after Auction 97 concluded, the Commission determined that two of the more successful winning bidders were ineligible for over \$3 billion in small business bidding credits because they were *de facto* controlled by Dish. At the time, then-Commissioner Pai noted that the coordinated bidding between Dish and the other two bidders “gave the DISH entities a significant advantage over every other bidder in the auction. This conduct not only sent false signals regarding the level of demand in particular markets, but also allowed the DISH entities to maintain bidding eligibility deeper into the auction and raise costs on other bidders.” Statement of Commissioner Ajit Pai, *Northstar Wireless, LLC et al.*, File No.

Nonetheless, supporters of resource sharing have offered literally no basis for changing the rules apart from their claim that the auction will be too complicated, which is both incorrect and, in any event, would not warrant such a change. Moreover, these parties' proposal to permit resource sharing among bidders as long as those bidders are not bidding in the same geography, by its very nature invites the sort of collusion the rules are intended to prevent.³⁶ In particular, it encourages parties to divide up territory where the parties will not compete against one another. Such an agreement could set a market structure precedent with effects beyond the scope of this auction.

We disagree with the Rural Coalition's assertion that the concerns that prompted the Commission to adopt anti-collusion rules in spectrum auctions do not exist with Auction 903 because, among other things, Auction 903 applicants "will be smaller, regional, and often entirely intra-state providers" that lack broad footprints.³⁷ This commenter also seeks to contrast Auction 903 with the Incentive Auction, where "[r]everse auction participants will compete on a national basis for the limited funds that forward auction participants will contribute. . . ."³⁸ But that simply is not the case. The core objective of Auction 903 is to ensure competition not only within a given geography or eligible area, but across the entire nation. The Commission has carefully designed an auction structure to ensure that applicants, wherever they bid and regardless of their technology choice, will compete head-to-head for the scarce funds available.

0006670613 et al., Memorandum Opinion and Order, 30 FCC Rcd 8887 (2015), *remanded on other grounds by SNR Wireless LicenseCo, LLC v. FCC*, 868 F.3d 1021 (D.C. Cir. 2017).

³⁶ See, e.g., WISPA Comments at 5.

³⁷ Rural Coalition Comments at 10.

³⁸ *Id.* at n.24 (quoting *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 400 (2012)).

Relaxing the anti-collusion rules in ways that would facilitate collusion across geographic areas would undermine the very objective of Auction 903. For these reasons, their proposal should be rejected.

C. The Commission Should Address the Effect of Cost Model Surrogate Locations on Deployment Obligations before the Auction.

The Commission's CAF cost model (also known as the Connect America Cost Model or CAM) includes surrogates, randomly placed along roads, for locations in a census block that the cost model could not geocode.³⁹ One commenter has analyzed the effects these surrogates will have on a CAF cost model recipient's location deployment obligations and found that the model overestimates locations in eligible census blocks by an average of over 20%.⁴⁰ Such a large swing in the actual number of existing locations will undermine a bidder's confidence in the support amounts they are willing to accept. It would be bad enough that a winning bidder might learn after the fact that only 80% of the locations it committed to serve actually exist and may be counted toward its deployment obligations. But it would be even worse to penalize the carrier, as the current rules would do, for failing to meet its deployment obligations because of the Commission's decision to overestimate the number of actual locations in CAF II-eligible census blocks. For these reasons, AT&T recommends that, before the Commission publishes the final list of CAF II auction-eligible census blocks and location counts, it remove surrogates from those location counts. It would be unfair to hold winning bidders to a location count requirement that

³⁹ *Connect America Fund, High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, 28 FCC Rcd 5301, ¶ 53 (WCB 2013) (*CAM Platform Order*).

⁴⁰ Vantage Point Solutions Comments at 2.

includes locations that the Commission “randomly [placed] along the roads within the census block” because *it* was unable to geocode them.⁴¹

The Commission previously acknowledged that the number of locations its cost model identifies in a particular census block may be inaccurate. In its December 2014 order establishing requirements applicable to price cap carriers that elect the Commission’s CAF II state-level commitment, the Commission “recognize[d] that in particular areas . . . the total number of locations assigned to a particular price cap carrier in a given state according to the model simply does not necessarily reflect the actual number of locations.”⁴² With a state-level commitment, the Commission assumed that the model’s inaccuracies would “cancel one another out”⁴³ because in some census blocks, the model also identified fewer locations than actually exist. However, in the CAF II auction, where some providers may win just one census block group in a state, there may be no census blocks with fewer locations than actually exist to “cancel out” the census blocks with more locations than actually exist.

Removing surrogates from location counts *before* the auction is the optimal way to address this issue but the Commission also could establish a location deployment requirement that is no higher than 90%⁴⁴ or permit winning bidders to notify the Commission during the service term that specific census blocks are missing a certain number of locations. Based on a certification from the winning bidder, the Commission would reduce those location counts from

⁴¹ *CAM Platform Order* at ¶ 53.

⁴² *Connect America Fund et al.*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd 15644, ¶ 38 (2014) (*December 2014 CAF II Order*).

⁴³ *Id.*

⁴⁴ See Verizon Petition for Reconsideration, WC Docket Nos. 10-90, 14-58, 14-259, at 5-8 (filed Aug. 8, 2016) (urging the Commission to reduce the minimum buildout threshold from 95% to 90% of modeled locations).

the recipient's total location obligation. The Commission certainly should not penalize bidders for not serving such locations if they timely notify the Commission of their findings. Finally, AT&T has no objection to Vantage Point's proposal to permit winning bidders to build to 95% of the required number of locations and keep 100% of funding⁴⁵ if the carrier certifies that any discrepancy is due to missing locations. While this is not the framework the Commission used previously for CAF recipients, including AT&T,⁴⁶ the granular bidding areas of the CAF II auction warrant such a change in the rules.

III. The Commission Should Adopt Its Application Proposals, with Some Modifications, and It Should Reject Requests to Impose Technology-Specific Restrictions That Would Inhibit Robust Auction Participation.

Consistent with its approach in other auctions, the Commission adopted a two-stage application process for Auction 903. Pre-auction, a potential bidder will submit some basic information on a "short form" that will allow Commission reviewers to determine the bidder's eligibility to participate in the auction. Post-auction, a winning bidder will file a "long form," containing detailed information about the bidder and its proposed network. Commission staff will conduct an extensive review of the bidder's long form to establish its qualifications to receive support.⁴⁷ The purpose of the short form is to obtain sufficient information about an applicant's experience, financial qualifications, and "its plans for provisioning service if awarded support to assess a bidder's technical qualifications to bid for specific performance tier and

⁴⁵ Vantage Point Comments at 5.

⁴⁶ See *December 2014 CAF II Order* at ¶ 148 (directing USAC to recover an amount of support that is equal to 1.89 times the average amount of support per location in the state over the six-year term for the relevant number of locations to which the carrier has failed to deploy).

⁴⁷ See *Phase II Auction Order* at ¶ 92.

latency combinations.”⁴⁸ At the same time, the Commission recognizes the importance of “minimiz[ing] the burden on applicants and Commission staff” at the initial application stage.⁴⁹ The long-form filing burdens on winning bidders are obviously greater, and appropriately so. Winning bidders are required to submit detailed network information, including a network diagram certified by a professional engineer.⁵⁰ An engineer also must certify that the described network is capable of providing the required services to at least 95% of the locations covered by the winning bid.⁵¹ With this two-stage application filing process, AT&T believes that the Commission will succeed in striking the right balance between “the need to collect essential information with administrative efficiency.”⁵²

Imposing unnecessarily burdensome requirements on short-form filers, as proposed by some commenters, would discourage prospective bidders from fully exploring all the network expansion opportunities made possible by Auction 903. Instead, bidders will be more likely to limit their focus to fewer and smaller geographic areas. Having to comply with burdensome requirements just to earn the right to show up at the auction could harm competition and undermine a key objective of the CAF program, which is to expand broadband-capable networks throughout rural and high-cost areas. Done right, Auction 903 should be highly competitive with a large number of providers bidding for scarce funding. As such the chances of any given

⁴⁸ *Public Notice* at ¶ 31.

⁴⁹ *Id.*

⁵⁰ *See, e.g.*, 47 C.F.R. § 54.315(b)(iv).

⁵¹ *Id.*

⁵² *Phase II Order* at ¶ 92.

provider having a winning bid may be small and it is essential that the Commission keep that in mind as it finalizes the short form requirements.

A. The Commission Should Abandon or Modify Its Proposed Five-Point Financial Qualification Scale.

The Commission adopted effective, common-sense financial reporting requirements for Auction 903 short-form filers in its *Phase II Auction Order*. The *Public Notice* proposes additional reporting requirements that will complicate and thus slow the Commission's review of Auction 903 short forms. These proposals should not be adopted or, at least, not adopted absent significant modification. In its *Phase II Auction Order*, the Commission concluded that Auction 903 short-form applicants should certify that "they have provided voice, broadband, and/or electric distribution or transmission services for at least two years and specify the number of years they have been operating, or they are the wholly-owned subsidiary of an entity that meets these requirements."⁵³ These entities also must submit financial statements from the prior fiscal year that have been audited by an independent certified public accountant.⁵⁴ The Commission found that these requirements will provide it "with sufficient assurance . . . that an entity has at a minimum level demonstrated that it has the ability to build and maintain a network" and will provide "insight into an entity's financial health."⁵⁵ Recognizing the importance of permitting non-established voice, broadband and/or electric distribution or transmission network operators to participate in Auction 903, the Commission also developed an alternative means for such

⁵³ *Id.* at ¶ 100. Broadband and voice providers must certify that they have filed FCC Forms 477 during that time period and electric transmission and distribution companies must file other documentation. *Id.*

⁵⁴ *Id.* at ¶ 101.

⁵⁵ *Id.* at ¶¶ 100, 101.

entities to qualify to bid in the auction.⁵⁶ We support these Commission decisions and agree that they will be effective in evaluating the financial abilities of applicants.

In its *Public Notice*, the Commission requests comment on whether it should go further and supplement its previously adopted financial reporting requirements for some or all Auction 903 short-form applicants.⁵⁷ Specifically, the Commission proposes adding a five-point financial metric scale that it claims will “quickly and efficiently” identify the short-form filer’s financial qualifications. An applicant that does not receive at least three points will be subject to an “in-depth review” of its financial information.⁵⁸ AT&T understands the Commission’s desire to rely on a handful of financial metrics to determine the financial qualifications of auction bidders. In theory, the simple scoring of these metrics will facilitate Commission review of what could be hundreds of short forms. Unfortunately, the Commission’s proposed five-point scale misses the mark, and will slow, rather than expedite, the Commission’s review of short-form applications.⁵⁹

As ITTA and USTelecom point out, there simply is no reason to apply any further financial reporting requirements on entities that have been providing voice and broadband service for at least two years and that submit third-party audited financial statements with their

⁵⁶ *See id.* at ¶¶ 106-09.

⁵⁷ It is unclear whether the Commission is proposing to apply these new requirements to *all* Auction 903 applicants or only those applicants that do not satisfy the audited financial statement requirement established in the *Phase II Auction Order*. *See* USTelecom Comments at 2 (describing the ambiguity of the applicability of the proposed five-point scale).

⁵⁸ *Public Notice* at ¶ 58.

⁵⁹ *See, e.g.,* WISPA Comments at 21.

short forms.⁶⁰ Subjecting carriers and others that satisfy the *Phase II Auction Order* presumption, described above, to an “in-depth review” “to determine whether the applicant is qualified to bid”⁶¹ is nonsensical. If the Commission is determined to impose additional financial reporting requirements on all short-form filers, then it should adopt USTelecom’s substitute proposal, which deletes the last three Commission-proposed metrics and replaces them with one based on the filer’s GAAP operating cash flow.⁶²

B. The Commission Should Refrain from Imposing Unwarranted Technology-Specific Conditions on Prospective Bidders.

AT&T urges the Commission to reject any proposal that has the effect of hamstringing providers using certain technologies from participating fairly in the CAF II auction. Several commenters urge the Commission to impose additional, gating requirements only on wireless and satellite applicants. These proposals range from short-form filing requirements (e.g., requiring wireless providers to submit “preliminary” propagation maps of their planned coverage areas and requiring satellite providers to identify the total capacity of their satellites and the number of locations they can serve with those satellites by performance tier) to restricting the performance tiers in which certain providers may bid.⁶³ If adopted, the proposals are certain to increase the CAF II auction participation costs of wireless and satellite providers and, by artificially restricting whether and how these providers might participate in the auction, could

⁶⁰ ITTA Comments at 5; USTelecom Comments at 2. AT&T has no objection to the Commission extending this presumption to electric distribution or transmission service providers, consistent with the *Phase II Auction Order*.

⁶¹ *Public Notice* at ¶ 58.

⁶² USTelecom Comments at 4.

⁶³ See, e.g., Rural Coalition Comments at 19-21; ITTA Comments at 5-7.

result in a less competitive and successful auction. In addition, wireless technologies may well be one of the best solutions to providing broadband in rural and remote areas. Undermining their use could harm the consumers this auction is designed to benefit.

Requiring wireless providers to submit preliminary propagation maps at the short-form stage in order to participate in the auction not only will fail to give the Commission's reviewers "essential information," but also will be administratively *inefficient* in the extreme for both applicants and staff, contrary to the Commission's stated goal for these forms.⁶⁴ A propagation map generally provides useful and reliable information only if the wireless provider creates it *after* completing its detailed network design. On the other hand, a "preliminary" propagation map produced before the wireless provider completes its full network design and analysis would not be a reliable indicator of the services that could be provided at specific locations within the mapped area and thus would be of little value to Commission reviewers.

Similarly, it is unnecessary for the Commission to preclude providers using certain technologies from bidding in certain performance tiers.⁶⁵ The Commission proposes requiring every short-form applicant to certify under penalty of perjury that "if the applicant wins support, it will be able to build and operate facilities in accordance with the [CAF] obligations and the Commission's rules generally."⁶⁶ We agree with the Commission that such a certification, coupled with the forfeitures the Commission will impose in the event of a default, provide sufficient incentives for an applicant to "submit truthful and accurate evidence of its technical

⁶⁴ *Phase II Auction Order* at ¶ 92.

⁶⁵ *See, e.g.*, Rural Coalition Comments at 25 (urging the Commission to bar satellite providers from bidding in the 100Mbps and Gigabit performance tiers).

⁶⁶ *Public Notice* at ¶ 62.

qualifications.”⁶⁷ It is not realistic to think that a provider will invest the time and money to bid in the auction for performance tiers that it has no ability to serve, commit perjury in the process, and knowingly subject itself to fines.

As proposed by the Commission, every short-form filer will have the opportunity to provide information about the technologies it intends to use and its proposed network design.⁶⁸ To the extent Commission reviewers have questions, they may require the applicant to provide additional information. The short-form filing requirements proposed in the *Public Notice* are adequate to establish a bidder’s eligibility while not being so burdensome as to deter participation. The Commission should reject proposals that would disrupt the balance the Commission has sought to create. As it reviews these commenters’ requests, in addition to evaluating whether these proposals will tip that balance, the Commission should be mindful of its obligation to adopt universal service requirements that do not “unfairly advantage nor disadvantage one provider over another.”⁶⁹ The technology-specific proposals discussed above plainly are inconsistent with this competitive neutrality principle and should not be adopted.

C. The Commission Does Not Need to Establish a Subscription Rate for Purposes of the Auction.

The Commission sought comment on whether it should require an applicant “to assume a subscription rate of at least 70 percent for voice services, broadband services, or both when determining whether it can meet the public interest obligations for its selected performance tiers

⁶⁷ *Id.* at ¶ 54.

⁶⁸ *Public Notice*, Appendix A.

⁶⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 47 (1997).

and latency combinations.”⁷⁰ The Commission received little comment on this issue, with one commenter supporting it and another opposing it (at least as proposed).⁷¹ Such a proposal is unnecessary.⁷²

A winning bidder’s obligation is to offer voice and broadband service, which meet the public interest obligations for its selected performance tiers and latency combinations, to the required number of locations in the eligible census blocks covered by its winning bid. And, as the Commission has said elsewhere, the winning bidder must make the supported service available to any requesting customer in such areas within ten business days.⁷³ Furthermore, CAF recipients will be subject to mandatory performance testing to provide assurance that their service complies with the applicable public interest obligations. Although the Commission has not yet finalized the performance testing procedures, once it does, CAF II auction recipients will have to test their networks for compliance with speed and latency metrics, and certify and report the results to USAC, with those results subject to audit.⁷⁴ If an auction recipient fails to comply

⁷⁰ *Public Notice* at ¶ 36.

⁷¹ Rural Coalition Comments at 21-23; WISPA Comments at 13-14.

⁷² If the Commission disagrees, AT&T recommends that it establish a rate consistent with the Commission’s own data on subscription rates in rural areas and, as suggested by WISPA, phase in that assumed subscription rate with the winning bidder’s phased-in deployment milestones. We discuss these proposals below.

⁷³ See, e.g., *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 12900, at 4 (WCB 2016).

⁷⁴ See 47 C.F.R. § 54.313(a)(11); *Wireline Competition Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology Seek Comment on Proposed Methodology for Connect America High-Cost Universal Service Support Recipients to Measure and Report Speed and Latency Performance to Fixed Locations*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 12623, ¶ 2 (2014). AT&T urges the Commission to finalize quickly its performance measurement requirements so that CAF II auction bidders will be able to make informed decisions about participation and bidding strategy. If auction participants do not know exactly what will be required of them, they will have to bid based on potentially false assumptions, which can only harm the auction outcome.

with its public interest obligations, it may be subject to forfeitures and penalties. The Commission's existing requirements are sufficient to address concerns about the adequacy of a CAF II auction recipient's network.

If the Commission nonetheless decides to require applicants to assume a certain subscription rate, AT&T recommends that the Commission select a rate based on its own subscription data. The 70% subscription figure the Commission cites in its *Public Notice* comes from a Wireline Competition Bureau order adopting inputs to the CAM. In that proceeding, the Bureau adopted the 70% subscription rate “for the purpose of estimating the amount of revenues a carrier may reasonably recover from end-users. . . .”⁷⁵ The Bureau set this figure at a high rate as a way to lower the amount of support it would have to make available via the cost model. The more revenue a carrier is estimated to receive from customers, the smaller subsidy the Commission will have to provide.

Here, the context is quite different and requiring applicants to assume a particular subscription rate will affect network architecture decisions. If the Commission-mandated subscription rate is unrealistically high, the Commission will force applicants to over-design networks for these high-cost and extremely high-cost areas thus artificially increasing their costs to the detriment of the competitive bidding process and the goals of the program. Additionally, it may have the effect of deterring participation, resulting in a less competitive auction and few new locations served by broadband. While the Rural Coalition claims that at least a few of its members have subscription rates of 70% or more,⁷⁶ it appears that these high rates include

⁷⁵ *Connect America Fund*, WC Docket No. 10-90, 29 FCC Rcd 3964, ¶ 177 (WCB 2014).

⁷⁶ Rural Coalition Comments at 23.

customers that receive speeds lower than the CAF II auction's minimum performance tier of 10Mbps downstream/1Mbps upstream. Specifically, this commenter cites with support results from a 2015 NTCA member survey that it claims demonstrates that the broadband take rate of NTCA's members is over 70%.⁷⁷ NTCA has since released more recent data that show only 41% of its responding members' customers subscribe to broadband service at speeds that are equal to or greater than 10Mbps downstream.⁷⁸

According to the Commission's own data, as of June 2016, the *national* subscription rate for 10 Mbps downstream/1 Mbps upstream broadband service was 63%, and that rate was 47% for broadband service at speeds of at least 25 Mbps downstream/3 Mbps upstream.⁷⁹ It is well documented that adoption rates in rural areas lag behind urban areas. For example, based on its analysis of Form 477 data, the Commission found that, at the end of 2014, the adoption rate in counties with the lowest population density was 20% for broadband service at speeds of at least 10 Mbps downstream/1 Mbps upstream, compared to 48% in counties with the highest population density.⁸⁰ Estimates of adoption rates for 25Mbps downstream/3Mbps upstream

⁷⁷ *Id.* at n.59.

⁷⁸ See *NTCA 2016 Broadband/Internet Availability Survey Report*, at 3 (July 2017), available at <https://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2016ntcabroadbandsurveyreport.pdf>. It does not appear that NTCA provided the average upstream speed of these members' customers in this report. The 2015 take rate for 10Mbps downstream contained in the NTCA survey cited by the Rural Coalition was 39%. See <https://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2015ntcabroadbandsurveyreport.pdf> at p. 3.

⁷⁹ *Internet Access Services: Status as of June 30, 2016*, Industry Analysis and Technology Division, Wireline Competition Bureau, at 30 (rel. April 2017), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-344499A1.pdf.

⁸⁰ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion et al.*, GN Docket No. 15-191, 2016 Broadband Progress Report, 31 FCC Rcd 699, Table 11 (2016).

ranged from 32% across high population density counties to only 14% for counties with the lowest population density.⁸¹

In addition to using a subscription rate that is based on Commission data, AT&T also agrees with WISPA that the Commission should stagger the subscription rates just as it has with the deployment milestones. In other words, an applicant should not have to demonstrate on Day One that its proposed network would support the Commission-defined subscription rate.⁸² Instead, such a demonstration should be necessary only at Year Six, when the applicant must be offering service consistent with its public interest obligations to 100% of the required number of locations.⁸³

IV. Conclusion

AT&T requests that the Commission make slight modifications to its proposed Auction 903 procedures consistent with AT&T's recommendations provided above.

Respectfully Submitted,

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⁸¹ *Id.*

⁸² WISPA Comments at 13.

⁸³ *Id.* at 14.

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